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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,262	01/23/2002	Peter L. Sirota	REAL-2006011 (RN66)	8572
61857 7590 06/22/2009 AXIOS LAW GROUP, PLLC / REALNETWORKS, INC 1525 4TH AVE, STE 800 SEATTLE, WA 98101-1648				
EXAMINER				
HONG, HYUNJ				
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2426				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/056,262

**Applicant(s)**

SIROTA ET AL.

**Examiner**

Hyun J. Hong

**Art Unit**

2426

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-24, 26-48 and 50-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-24, 26-48 and 50-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to the amendment filed on 3/09/09. Claims 2-24, 26-48, 50-55 are pending in this application.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-9, 11-19, 21-24, 26-33, 35-43, 45-48, 50-55 rejected under 35 U.S.C. 103(a) as being unpatentable over Blasko (US 2002/0083435) in view of Cristofalo (US 2002/0194589).

**Regarding claim 7, 31, 50,** Blasko discloses in a client system, a method of operation comprising: asynchronously caching, at a client cache, said plurality of advertisements of various time lengths contemporaneous with streaming of a streaming program ([0028, 0030, 0035-0036]); and

Causing one or more of said cached advertisements to be synchronously rendered during an advertisement time slot of a streaming program, replacing advertisements, if any, included in the streaming program for the advertisement time slot ([0026-0027, 0051])

Blasko does not disclose providing an advertisement publisher with a profile of the user of client system at a time prior to streaming of a program via a communication

channel; asynchronously retrieving a plurality of advertisements, via said same communication channel, in an adaptive manner to minimize interference with a discernable quality, from the client system's perspective, of the contemporaneous receiving, via said same communication channel, and rendering of said streaming program on said client system.

However, Cristofalo discloses providing an advertisement publisher with a profile of the user of client system at a time prior to streaming of a program via a communication channel ([0040]); asynchronously retrieving a plurality of advertisements, via said same communication channel, in an adaptive manner to minimize interference with a discernable quality, from the client system's perspective, of the contemporaneous receiving, via said same communication channel, and rendering of said streaming program on said client system (fig. 4a, [0017, 0029]). It would have been obvious to combine the adaptive reception of Cristofalo into the ad system of Blasko. This would allow the ad system to receive programs and ads without hindering the quality because of a lack of bandwidth.

Regarding **claims 2 and 26**, Blasko teaches obtaining the cached ads for targeting the user client system (Blasko - par. 3, lines 10-12; par. 60, lines 4-6; Rand- par. 11; par. 20, lines 1-5; par. 22) based on the profile (Blasko -par. 56, lines 5-15; 322-fig. 2).

Regarding **claims 3 and 27**, Blasko teaches the profile of the user of client system comprises selected ones of a plurality of demographic and interest (preference) characteristics of the user (Blasko-par. 11 ; par. 20, lines 195; par. 22).

Regarding **claims 4 and 28**, Blasko teaches the profile of the user of client system comprises geographic (region) information of the user (Blasko-par. 11; par. 20, lines 5-7; par. 22, lines 6-8).

Regarding **claims 5 and 29**, Blasko teaches the programming instructions are designed to enable the apparatus to receive the advertisements of various time lengths from the advertisement publisher (Blasko-par. 31, lines 11-13; par. 36, lines 6-8).

Regarding **claims 6 and 30**, Blasko teaches the programming instructions are designed to enable the apparatus to receive locations (advertisement resource locators) of the advertisements of various time lengths from the advertisement publisher, and retrieve the advertisements of various time lengths from the locations (Blasko-par. 31, lines 7-13; par. 48).

**Regarding claims 8, 32, 51**, Blasko does not disclose the programming instructions are designed to enable the apparatus to include as part of the performance of said adaptive retrieving, monitoring at least one of a late arrival rate, a loss rate, and a resend rate of data packets associated with said streaming program to determine whether asynchronously retrieving said plurality of advertisements is interfering with said discernable quality.

However, Cristofalo, discloses the programming instructions are designed to enable the apparatus to include as part of the performance of said adaptive retrieving, monitoring at least one of a late arrival rate, a loss rate, and a resend rate of data packets associated with said streaming program to determine whether asynchronously retrieving said plurality of advertisements is interfering with said discernable quality

([0034, 0035]). It would have been obvious to combine the adaptive reception of Cristofalo into the ad system of Blasko. This would allow the ad system to receive programs and ads without hindering the quality because of a lack of bandwidth.

**Regarding claims 9, 33, 52**, Blasko does not disclose programming instructions are designed to enable the apparatus to include as part of the performance of the adaptive retrieving, adjustment of a download rate at which said plurality of advertisements are asynchronously retrieved.

However, Cristofalo discloses programming instructions are designed to enable the apparatus to include as part of the performance of the adaptive retrieving, adjustment of a download rate at which said plurality of advertisements are asynchronously retrieved ([0034, 0035]). It would have been obvious to combine the adaptive reception of Cristofalo into the ad system of Blasko. This would allow the ad system to receive programs and ads without hindering the quality because of a lack of bandwidth.

Regarding **claims 11 and 35**, Blasko teach the programming instructions are further designed to enable the apparatus to receive a notification of the advertisement time slot (avails) (Blasko-par. 26; par. 27; par. 31, line 11-par. 33, line 5), including the advertisement time slot's time length (Blasko-par. 35, lines 5-6; par. 36, lines 8-25; 310 - fig. 2; par. 40, lines 8-14; par. 49; par. 51, lines 1-5).

Regarding **claims 12 and 36**, Blasko teach the programming instructions are designed to enable the apparatus to include as part of the performance of the receiving of a notification of the advertisement time slot, by having an advertisement module (304

- fig. 2) receives the notification from a player of the apparatus receiving and rendering the streaming program (Blasko-par. 40, lines 4-7 & 12-14; or par. 58-59; par. 23, lines 4-12; par. 25, lines 11-13).

Regarding **claims 13 and 37**, Blasko teach the programming instructions are designed to enable the apparatus to include as part of the performance of the receiving of a notification of the advertisement time slot, by having an advertisement module (304/310 - fig. 2) receive the notification from an operating system service (function module 302), of the apparatus receiving a streaming of event notifications (avail info) companion to the streaming program on behalf of a player (306/24) of the streaming program of the apparatus (Blasko-par. 40; par. 51, lines 1-5; par. 52-par. 53; par. 23, lines 4-12).

Regarding **claims 14, 23, 24, 38, 47, and 48**, teach the programming instructions are designed to enable the apparatus to include as part of the performance of the receiving of a notification of the advertisement time slot, receipt of the notification from a broadcaster (headend/service provider) of the streaming program (Blasko-par. 27; par. 31, lines 4-6; par. 49; par. 51, lines 1-5; par. 23, lines 12-18).

Regarding **claims 15, 16, 39, and 40**, Blasko teach the programming instructions are designed to enable the apparatus to include as part of the performance of the synchronous rendering of one or more of the cached advertisements during the advertisement time slot, selection of one or more of the cached advertisements with their combined total time length at least equals to the advertisement time slot's time length (Blasko-par. 26; par. 48; par. 51, lines 1-5; par. 52-53).

Regarding **claims 17, 41, and 54**, Blasko teach the programming instructions are further designed to enable the apparatus to notify a publisher of an advertisement (central office/advertiser) when rendering commences (an ad is played) on the client system for the advertisement (Blasko-par. 37).

Regarding **claims 18, 42, and 55**, Blasko teach the programming instructions are designed to enable the apparatus to notify a publisher of an advertisement when rendering ceases (after an ad is played) on the client system for the advertisement (Blasko-par. 37; par. 54).

Regarding **claims 19 and 43**, Blasko teach the streaming program is a streaming audio program, and the advertisements are audio advertisements (Blasko-par. 59; par. 23, lines 5-9; par. 25).

Regarding **claims 21 and 45**, Blasko teach the streaming program is a streaming multi-media program (web page, electronic program guide, etc.) (Blasko-par. 23, lines 12-18; par. 25, lines 4-11; par. 38, lines 7-9; par. 59), and the advertisements (included in the streaming program) are multi-media (web page, EPG, etc.) advertisements (Blasko-par. 58, lines 5-9; par. 25, lines 8-11).

Regarding **claims 22 and 46**, Blasko teach the streaming program is a streaming television program, and the advertisements are television advertisements (Blasko-par. 23, lines 5-18; par. 25, line 3; par. 27; par. 58, line 9).



4. Claims 10, 20, 34, 44, rejected under 35 U.S.C. 103(a) as being unpatentable over Blasko (US 2002/0083435) in view of Cristofalo (US 2002/0194589) in View of Brown (US 6,950,623).

**Regarding claim 10 and 34,** Blasko in view of Cristofalo does not disclose caching of a plurality of advertisements of various time lengths comprises caching at least a selected one of 30 second advertisements and 60 second advertisements.

However, Brown discloses disclose caching of a plurality of advertisements of various time lengths comprises caching at least a selected one of 30 second advertisements and 60 second advertisements (fig. 6B - lines 5-10; fig. 10; col. 4, lines 40-47; col. 6, lines 50-55; col. 9, lines 16-36; col. 9, lines 50-51). It would have been obvious to combine the ad time lengths of Brown into the ad system of Blasko in view of Cristofalo in order to ensure that inserted ads are not longer than the identified ad segment.

**Regarding claims 20 and 44,** Blasko in view of Cristofalo does not disclose the streaming program is a streaming radio program, and the advertisements are audio advertisements.

However, Brown discloses disclose the streaming program is a streaming radio program, and the advertisements are audio advertisements (col. 4 lines 33-47, col. 3 lines 52-56, col. 3 lines 66-col. 4 lines 4). It would have been obvious to combine the streaming audio of Brown into the ad system of Blasko in view of Cristofalo in order to expand the advertiser's customer base.

### ***Response to Arguments***

#### **In response to applicant's argument:**

Applicants respectfully submit that the proposed combinations of art simply do not teach or even suggest "asynchronously retrieving a plurality of advertisements, via said same communication channel, in an adaptive manner to minimize interference with a discernable quality... of the contemporaneous receiving, via said same communication channel, and rendering of said streaming program on said client system," as claimed.

Arguments are moot in view of new grounds of rejection (Cristofalo).

#### **In response to applicant's argument:**

*Blasko* teach away from (and are directly contrary to) "asynchronously retrieving a plurality of advertisements, via said same communication channel" contemporaneous with "receiving, via said same communication channel, and rendering of said streaming program,"

Examiner respectfully disagrees. *Blasko* discloses that the program stream and

advertisement is contained in the same channel ([0053]) Arguments are also moot in view of new grounds of rejection (Cristofalo).

#### **In response to applicant's argument:**

Applicants respectfully submit that no combination of the cited art teaches or even suggests, "asynchronously retrieving a plurality of advertisements, via said same communication channel, in an adaptive manner to minimize interference with a discernable quality... of the contemporaneous receiving, via said same communication channel, and rendering of said streaming program," as claimed in Claim 7.

Arguments are moot in view of new grounds of rejection (Cristofalo).

#### **In response to applicant's argument:**

Applicants further respectfully submit that the Office Action has failed to state a *prima facie* case that Claim 7 is obvious because only knowledge gleaned from Applicant's disclosure could have lead one of ordinary skill in the art to make the proposed combination.

Arguments are moot in view of new grounds of rejection (Cristofalo).

### ***Conclusion***

Claims 2-24, 26-48, 50-55 are rejected.

### **Correspondence Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hyun J. Hong whose telephone number is (571)270-1553. The examiner can normally be reached on M-F (9:30a-7:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hirl can be reached on (571)272-3685. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/H. J. H./  
Examiner, Art Unit 2426

/Joseph P. Hirl/  
Supervisory Patent Examiner, Art Unit 2426  
June 18, 2009